IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 11.07.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.R.C.No.721 of 2004

P.Annamalai .. Petitioner

Vs.

1.The State rep. by
The Deputy Superintendent of Police,
PCR Wing, Dharmapuri.

2.V.Sundaram
3.P.Dadhu @ Peria Dadhu
4.R.jagadeesan
5.B.Govindan .. Respondents

Prayer:- This revision has been preferred against the order dated 06.02.2004 made in S.C.No.96 of 2002 on the file of the Special Judge for SC & ST Atrocities Act.

For Petitioner :Mr.R.Sankarasubbu

For Respondents :Mr.V.R.Balasubramanian (for R1)
Additional Public Prosecutor
Mr.C.Prabakaran (for R2 to R5)

JUDGMENT

This revision has been preferred by the complainant-P.W.1 in S.C.No.96 of 2002 on the file of the Special Judge for Prevention of (SC & ST) Atrocities Act, (Principal Sessions Judge), Dharmapuri at Krishnagiri. On the basis of the complaint preferred by P.W.1 under Ex.P.1 P.W.10 has registered a case under Section 3(1)(x) of the Prevention of (SC & ST) Atrocities Act.

2. On the appearance of the accused on summons, the learned Sessions Judge has furnished copies under Section 207 of Cr.P.C., and the charge under Section 3(1)(x) of the Prevention of (SC & ST) Atrocities Act was framed and when questioned, the accused pleaded not guilty. Before the trial Court P.W.1 to P.W.11 were examined and Ex.P.1 to Ex.P.10 were marked.

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3.P.W.1 is the complainant. He would narrate what he has stated in Ex.P.1-complaint. According to him, the occurrence had taken place on 26.12.2000 at about 8.00 am. The allegation against A1 to A4 made by P.W.1 is that they abused him by caste. Ex.P.1 is the complaint preferred by P.W.1

3.P.W.2 to P.W.5 have corroborated the evidence of P.W.1. P.W.5 is an independent witness. P.W.6 is a mahazar witness. P.W.2, P.W.5, P.W.7 & P.W.8 are the eye witnesses. P.W.9 is not an eye witness to the occurrence. P.W.10 is the inspector of Police, who had registered the complaint preferred by P.W.1 under Ex.P.1 under Karimangalam Police Station Cr.No.1532 of 2000 under Section 3(1)(x) of the Prevention of (SC & ST) Atrocities Act. Ex.P.8 is the FIR.

4.P.W.11 is the Investigating Officer, who had visited the place of occurrence on 13.1.2000 and prepared Ex.P.7 is the observation mahazar and had drawn Ex.P.10-rough sketch in the presence of P.W.6. He had arrested all the accused on 24.1.2001 and produced them before the court for judicial remand. After getting the community certificate for the complainant as well as for all the accused from the Deputy Tahsildar concerned, he had examined the witnesses and recorded their statement and after completing the formalities, has filed the charge sheet against the accused on 2.2.2001.

5.When incriminating circumstances were put to the accused under Section 313 of the Cr.P.C., they denied their complicity with the crime. The accused have not examined any witness on their side. After going through the oral and documentary evidence let in by the prosecution, the learned trial judge has come to the conclusion that the charge levelled against the accused has not been proved beyond any reasonable doubt and accordingly acquitted the accused from the charges levelled against them. Aggrieved by the findings of the learned trial judge P.W.1 has preferred this revision.

6.Now the point for determination in this revision is whether the findings of the learned trial judge is perverse in nature to warrant any interference from this Court?

7.The Point:- 7(a) The learned counsel for the revision petitioner Mr.R.Snakarasubhu would contend that the learned trial judge has acquitted the accused only on two grounds. The first being P.W.5 is a notorious man having bad antecedents and hence his evidence cannot be relied upon and he was in a way helped P.W.1 to encroach upon a poramboke land. The second and main reason on which the learned trial judge has acquitted the accused is on the ground of in ordinate delay in preferring the FIR.

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7(b) The learned counsel appearing for R2 to R5 (A1 to A4) relying on 2003 SCC (Cri) 1205 (Thankappan Nadar and Others), would contend that under Section 397 and 401 of Cr.P.C., the High Court's power of a revision in an application filed by the de-facto complainant against acquittal order is very limited and only the High Court can interfere in the order of acquittal if it is brought to the light before the High Court that there was a procedural illegality or manifest error of law and while passing the order of acquittal the clinching evidence was overlooked by the trial Court and apart from that the High Court could not reappreciate the entire evidence and take a view contrary for setting aside an order of acquittal. The Honourable Apex Court in its findings in the above cited case has observed that:

> "there was no procedural illegality or manifest error of law found by the High Court while reversing the findings of the learned trial judge. Merely reappreciating the entire evidence the High Court had taken a contrary view for setting aside the order of acquittal. Only on that ground it was held by the Honourable Apex Court that such a course is not permissible for the High Court in exercising the revisional jurisdiction at the instance of the de-facto complainant against the order of acquittal."

The next ratio decidendi on which the learned counsel appearing for R2 to R5 (A1 to A4) placed his reliance is AIR 1998 SUPREME COURT 990 (Kishan Swaroop Vs. Government of NCT of Delhi). In the said case, relying on an earlier decision reported in AIR 1962 SC 1788 (K.Chinnaswamy Reddy Vs. State of Andhra Pradesh) the Honourable Apex Court has held that :

> "The High Court relying on the provisions of Sections 378 & 210 of Cr.P.C., has concluded that it was the primary responsibility of the State to file appeal/revision and therefore no criminal revision in respect of an order which is appealable at the instance of the State could/should be entertained without the requisite permission of the Public prosecutor."
>
> It has been further observed that in dealing with the revision powers of the High Court vis-a-vis the right of a private party to move in revision against an order of acquittal passed in a case instituted upon a police report.
>
> Further it has been observed by the Honourable Apex Court in the same judgment as follows:-
>
> It is true that it is open to an High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fit to appeal; but this jurisdiction should in our opinion be exercised by the High Court only in

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exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice."

In the case on hand, the glaring defect in the judgment of the learned trial judge, which necessitated this Court to interfere with the findings of the learned trial judge, is the reasoning given by the learned trail judge i.e, the inordinate delay in preferring the complaint on the date of occurrence. Admittedly the occurrence had taken place on 26.11.2000 at about 8.00 am. It is in evidence that P.W.1 has immediately approached the police and preferred the complaint which is Ex.P.1. But Ex.P.1 is dated 2.12.2000 and the FIR was registered on 15.12.2000. Only on this ground that for an occurrence which took place on 26.11.2000, after a lapse of 19 days the complaint under Ex.P.1 was preferred by P.W.1 the learned trial Judge has acquitted the accused from the charges levelled against them. It is pertinent to note at this juncture the evidence of P.W.10 which will go to show that there was flagrant violation of law in registering the FIR. P.W.10, the Inspector of Police, who had registered the FIR Ex.P.8 would admit in the cross-examination that even on 26.11.2000 at about 10.00 am P.W.1 came to the police station and preferred an oral complaint. He would further admit that even on a mere oral complaint action can be taken without insisting for a written complaint.

7(c) The learned counsel appearing for the revision petitioner has drawn the attention of this Court to Section 154 of Cr.P.C., and contended that there is a violation on the part of P.W.10 on his failure to reduce it in writing the oral information passed on to him by P.W.1 and to register the case. Section 154 of Cr.P.C., reads as follows:-

"Information in congnizable cases:-

(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.

(3)Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a

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cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

The learned counsel for the revision petitioner would further represent that since the police failed to take action on the oral complaint preferred by P.W.1 on the date of occurrence itself, P.W.1 immediately approached the Superintendent of Police concerned and preferred a written complaint. He further represents that the said complaint was not marked before the trial Court by the prosecution and that he is having a copy of the same.

7(d)Under such circumstances, it cannot be said that the findings of the learned trial judge is free from glaring defect in the procedure followed and there is manifest error on the point of law which led to a flagrant miscarriage of justice. Under such circumstances, I am of the view that it is a fit case, in which, this Court has to interfere with the findings of acquittal by the learned trial Judge. Point is answered accordingly.

8.In fine, the revision is allowed and the findings of the learned trial judge in S.C.No.96 of 2002 on the file of the Special Judge for Prevention of (SC & ST) Atrocities Act, (Principal Sessions Judge), Dharmapuri at Krishnagiri, is set aside and the matter is remanded to the trial Court for a fresh trial. P.W.1 must be given an opportunity to mark the complaint preferred by him to the Superintendent of Police on the date of occurrence i.e., on 26.11.2000. The trial Court need not be carried away by any of the observation made by this Court in this order.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar.

To,

1. The Special Judge, Prevention of (SC & ST) Atrocities Act, Dharmapuri at Krishnagiri.

2.The Deputy Superintendent of Police, PCR Wing, Dharmapuri.

• 1 cc to Mr. C. Prabakaran, Advocate SR No. 41938

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